

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 23 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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COMMISSIONER OF INCOME TAX

Versus

CHOKHAWALA ENTERPRISES

Appearance:

1. INCOME TAX REFERENCE No. 23 of 1994
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment years 1980-81 to 1983-84:-

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee firm is not liable to tax in respect of notional A.L.V. in respect of shops/flats sold to various buyers to whom possession thereof had been transferred after receiving full consideration but sale deeds in respect thereof were not executed and registered?"

2. We have heard Mr MR Bhatt, learned Senior Standing Counsel for the applicant- revenue. Though served, none appears for the respondent - assessee.

3. The question referred, itself contains the necessary facts. We may only add that some of the buyers of the flats who were to be into possession of the flats by the assessee after receiving consideration, had themselves let out their respective flats and were deriving rental income therefrom and were subjected to tax in respect of such rental income. The other buyers occupying the respective shops/flats have their own business/ residence. The Tribunal had, therefore, agreed with the finding given by the CIT (Appeals) that there was no justification in levying the tax in the hands of the assessee - firm as the insertion of the provisions of clauses (iii), (iiia) and (iiib) in Section 27 of the Income-tax Act i.e. by Finance Act, 1987 though w.e.f. 1-4-1988, was clarificatory.

4. At the hearing of this reference, our attention is invited to the decision of the Apex Court in CIT vs. Podar Cement Pvt. Ltd., 226 ITR 625 wherein their Lordships of the Supreme Court have accepted the the aforesaid view and held that though under the common law "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act etc., in the context of section 22 of the Income-tax Act, 1961, having regard to the ground realities and further having regard to the object of the Income-tax Act, namely, to tax the income, "owner" is a person who is entitled to receive income from the property in his own right. The requirement of registration of the sale deed in the context of section 22 is not warranted.

In view of the aforesaid pronouncement of the Hon'ble Supreme Court, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J) (K.A. Puj, J)
zgs/-